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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Mark C. Shults et al.

Examiner: Ryan C. Carter

#9

Serial No.: 09/489,588

Group Art Unit: 3736

D Love

Filed: January 21, 2000

Docket: 1146-4 DIV/CON

11/21/01

For: DEVICE AND METHOD
FOR DETERMINING
ANALYTE LEVELS

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid, in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on

Date: September 26, 2001Signature: Linda J. Scheurle
Linda J. Scheurle

Commissioner for Patents
Washington, D.C. 20231

RESPONSE

Sir:

This is in response to the communication mailed from the Patent and Trademark Office on August 28, 2001, indicating that the communication filed by Applicants on July 19, 2001 is informal/non-responsive to the Office Action issued by the PTO on August 14, 2001. This subject response is due to be filed by September 28, 2001.

In the communication of August 28, 2001, the Examiner indicated that the Amendment filed by Applicants on July 19, 2001 does not address the rejections made by the Examiner in the Office Action. The Preliminary Amendment filed by Applicants (filed by Certificate of Mailing on July 19, 2001) was received by the PTO on July 23, 2001 prior

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to the issuance of the Office Action of August 14, 2001. As such, the Examiner's position was not based on the subject application as it existed at that time, particularly in light of the Preliminary Amendment wherein a number of claims were revised and added, and further in light of the Information Disclosure Statement, both of which were filed on July 19, 2001. A copy of the postcard received by undersigned counsel evidencing receipt of Applicants' communication of July 19, 2001 by the PTO on July 23, 2001 is attached hereto for the Examiner's review.

Since Applicants' submission of July 19, 2001 was received by the PTO in advance of the issuance of the Office Action of August 14, 2001, undersigned counsel respectfully requests that the Office Action of August 14, 2001 be canceled and fully superseded by a new Office Action that takes into account Applicants' July 19, 2001 submission, including the Preliminary Amendment and the references identified in the Information Disclosure Statement.

The Examiner is requested to direct any telephone inquiries to undersigned counsel at the telephone number listed below.

Respectfully submitted,



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RMR:ljs

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